

staff and the remainder of the Republicans on the committee.

On many occasions, these relationships have assisted in forging a bipartisan consensus on a variety of issues that have helped advance good public policy in areas such as telecommunications and broadcast policy, aviation, trucking and rail issues, technology development and environmental and oceans concerns.

One particular issue stands out, last year's tobacco debate. Under difficult personal circumstances, Ivan worked closely with both Republicans and Democrats to help craft a compromise that was reported out of the committee by a 19-1 vote.

On other occasions, such as product liability or international trade we have been unable to reach bipartisan consensus and have been forced to hash out our differences on the Senate floor. In those instances, I have been blessed to have Ivan's energy, quick thinking, political intuition and wise counsel during the debate.

As, I mentioned earlier, I first met Ivan when he was in his early twenties. Both Peatsy and I have seen him grow from a college student to a dedicated and accomplished public servant. We rejoiced when he met and married his lovely wife, Martha Verrill. We celebrated when they had a baby boy, Ethan, and then a second, William. We grieved with him when his father passed away last year. And today we wish him well as he moves onto his next step in joining the internationally recognized law firm of Skadden, Arps.

Ivan, thank you for all that you have done for Peatsy and me, the Commerce Committee, and for our country. We will miss you.

#### JUDICIAL NOMINATIONS IN THE FIRST SESSION OF THE 106TH CONGRESS

Mr. LEAHY. Mr. President, as the Senate concludes this first session of the 106th Congress, I want to take a moment to thank Senator LOTT, the majority leader, and Senator HATCH, the chairman of the Senate Judiciary Committee, for working with us to confirm some of the judges desperately needed around the country.

Senator HATCH has pressed forward with three confirmation hearings since October 5, in the last five weeks of this session to bring the total number of hearings to seven for the year. Those hearings allowed for 12 additional judicial nominees to be reported to the Senate calendar and another two being ready for action by the committee. Senator HATCH supported all but one of the nominees voted upon by the Senate this year and worked hard to clear judicial nominees reported by the committee for action by the Senate.

I thank the majority leader for working with me and Senator DASCHLE, our Democratic leader, to find a way to consider each of the judicial nominations reported to the Senate by the Ju-

diciary Committee. In early October he committed to working with us and last week he announced that he would press forward for votes on the nominations of Judge Richard Paez and Marsha Berzon by March 15 and on the other nominations left pending on the Senate Executive Calendar, as well. With his assurance, Senator BOXER was willing to proceed immediately to consider a nomination important to the Senator from Mississippi. I want to commend Senator BOXER and Senator FEINSTEIN for their efforts on behalf of both Judge Paez and Ms. Berzon. With their support these nominees are each now headed toward final confirmation votes.

For the year, the senate confirmed 33 federal judges to the District Courts and Courts of Appeals around the country and to the Court of International Trade. The Senate has voted to fill only 33 of the 90 vacancies that have existed throughout the year, however, and there remain 36 judicial nominees still pending before the Senate. Most regrettably, the Senate rejected the nomination of Justice Ronnie White on an unprecedented part-line vote. Senator HATCH is fond of saying that the Senate could do better. I agree with him and hope that we will continue to do much better next year.

I began this year challenging the Senate to maintain that pace it established last year when the Senate confirmed 66 judges. I urged the Senate to move away from "the destructive politics of [1996 and 1997] in which the Republican Senate confirmed only 17 and 36 judges." We did not achieve much movement in the first 10 months of this year. It is my hope that developments over the last week signal that the Senate is finally moving toward recognition of our constitutional duty regarding judicial nominations and that we will consider them more promptly and fairly in the coming months.

I note that during the last two years of the Bush Administration, a Democratic Senate confirmed 106 federal judges. To reach that total this Congress, the Senate next year will need to confirm 73 additional judges. That will take commitment and work, but we can achieve it. In 1994, with a Democratic majority in the Senate, we confirmed 101 judges, and in 1992, the last year of the Bush Administration, a Democratic Senate confirmed 64 federal judges.

Meanwhile we end this year with more judicial vacancies than existed when we adjourned at the end of last year. We have again lost ground in our efforts to fill longstanding judicial vacancies that are plaguing the federal courts. In 1983 vacancies numbered only 16. Even after the creation of 85 new judgeships in 1984, the number of vacancies had been reduced to only 33 by the end of the 99th Congress in 1986. At the end of the 100th Congress in 1988, which had a Democratic majority and a Republican President, judicial vacancies numbered only 23. In 1999 the

Republican Senate adjourns leaving 57 current vacancies with 10 on the horizon.

Moreover, the Republican Congress has refused to consider the authorization of the additional judges needed by the federal judiciary to deal with their ever-increasing workload. In 1984 and in 1990, Congress did respond to requests for needed judicial resources by the Judicial Conference. Indeed, in 1990, a Democratic majority in the Congress created judgeships during a Republican presidential administration. Two years ago the Judicial Conference of the United States requested that an additional 53 judgeships be authorized around the country. This year the Judicial Conference renewed its request but increased it to 72 judgeships needing to be authorized around the country. If Congress had passed the Federal Judgeship Act of 1999, S. 1145, as it should have, the federal judiciary would have 130 vacancies today. That is the more accurate measure of the needs of the federal judiciary that have been ignored by the Congress over the past several years.

More and more of the vacancies are judicial emergencies that have been left vacant for longer periods of time. The President has sent the Senate qualified nominees for 15 of the current judicial emergency vacancies, which nominations remain pending as the Senate adjourns for the year.

Most troubling is the circuit emergency that had to be declared three months ago by the Chief Judge of the Court of Appeals for the Fifth Circuit. That is a situation that we should have confronted by expediting consideration of the nominations of Alston Johnson and Enrique Moreno this year. I hope that the Senate will consider them both promptly in the early part of next year. In the meantime, I regret that the Senate is adjourning and leaving the Fifth Circuit to deal with the crisis in the federal administration of justice in Texas, Louisiana and Mississippi as best it can but without the resources that it desperately needs.

#### COMPREHENSIVE TEST BAN TREATY

Mr. DODD. Mr. President, due to the illness of a family member, I was unable to participate in much of the debate on the Comprehensive Test Ban Treaty. I voted in favor of ratification of the treaty, and, now that there is ample time, I want to express my views on the treaty and the debate prior to the Senate's vote against ratification.

In my view, that vote was a sad day for the United States Senate, for our nation and for the world. During the debate, my colleague, Senator CLELAND spoke eloquently of the pride he felt as a young man sitting in this chamber 36 years ago when the Senate voted to ratify the first nuclear test ban treaty which prohibited atmospheric nuclear tests. I doubt that many people can express a similar sense of pride over the

outcome of the Senate's consideration of the Test Ban Treaty earlier this fall.

My disappointment rests, firstly, with the manner in which this treaty was considered. It can only be characterized as hurried, a legislative rush to judgement. For instance, Senator BYRD, one of the most senior members of this chamber and a former majority leader, rose to speak prior to a procedural vote. He dared to ask for fifteen minutes to speak during this chamber's headlong rush to vote against a treaty that would ban nuclear explosions throughout the world. The majority was well aware that there were not 67 votes for this treaty, and they knew what the final outcome would be. Sadly, though, the majority found it necessary to brush aside the most senior member on this side of the aisle. That is not the way we should conduct business in the Senate.

Unfortunately, that episode characterized the entire debate on this treaty. There was a hastiness and a needless sense of urgency about arriving at that ratification vote that we rarely see in this body. The sudden scheduling of the vote, prior to a single hearing, brought one week of frenzied focus that some members characterized as ample consideration. I think that it fell far short. All hearings on this treaty were crammed into one week, and most of the floor debate time was allocated on a Friday, prior to a three day weekend and after the week's final vote.

The brief debate and vote on this treaty were closely watched within this country and around the world. As evidence of that, most, if not all, Senators received a high volume of constituent calls, and no Senator is unaware that foreign leaders made rare appeals to this body.

The process followed with this treaty bore little resemblance to the process the Senate normally follows when it receives a treaty. The normal process includes careful consideration of a treaty's merits, an airing of the arguments from those who have objections, the addition of any safeguards that may be necessary, and, finally, a vote on ratification. In this case, that process was ignored and, some would argue, even maligned.

The Senate could have easily avoided a ratification vote, and, given the haste of its actions and the profound importance of the subject at hand, should have done so. Moreover, some members on the other side of the aisle clearly stated that they needed more time to examine this treaty, study its implications, and propose any appropriate amendments or side agreements. In fact, a majority of this body appeared to want more time to do so. That view is eminently reasonable considering how quickly this treaty was considered. Instead, all Senators were forced to make a fast decision and put their position on record. It is hard to avoid the conclusion that the defeat of this treaty was an end in itself, rather than a byproduct of considered action.

Now, by this vote, the United States Senate has allowed friend and foe to conclude that we want more nuclear testing and we need more nuclear explosions. We ignored Senator LEVIN's injunction to, at the very least, "do no harm." Instead, we have at a minimum muddled this nation's position with respect to containing the threat of nuclear warfare. All we had to do to avoid this outcome was to delay the vote. There were those on the other side of the aisle who endorsed doing just that. Regrettably, they were overruled by their colleagues who are overzealous opponents of this Administration.

I support the Comprehensive Test Ban Treaty, and, as the President stated, I expect that the treaty will be ratified—if not this year, then some year. Nuclear test explosions are becoming anachronisms; the tide of history is quickly sweeping away the last vestiges of their legitimacy. Prior to the vote, I had decided to support the President's request to put off the vote on ratification. It had become clear to the President and me and most other members of this chamber that, despite our strong support of this treaty, the Senate was not yet ready to support ratification. It was with regret that I arrived at that conclusion, because no one enjoys putting off a vote that will benefit the people of this nation, and, in this case, the people of the world. This treaty has been signed by over 150 nations. It is supported by nearly every member of the United Nations. Clearly it merited several days or even weeks of hearings in which experts on both sides of this issue would have a chance to present testimony and answer questions. More than that, though, it deserved to be ratified. Our nation is the world's greatest force for peace and freedom. It is not worthy of that stature for us to be outside the community of civilized nations that have committed themselves to an end to nuclear testing.

We have missed an opportunity to lead these nations, and to provide an example to countries like India and Pakistan, both of whom are on the verge of signing this treaty. Instead, we have, I fear, energized forces in those countries and others around the world that favor further testing or revoking pledges not to test.

This treaty will make the world more safe for our children and our children's children. We have a responsibility, despite the vote, to those future generations to do our part to stop nuclear detonations. If we fail in our responsibility, we will dash the hopes of generations yet to come. They may wonder why, when the world finally seemed ready to halt nuclear testing, the United States refused to go along.

Throughout the Cold War, nuclear tests may have been necessary to modernize this nation's nuclear weapons capability. But at the height of tensions with the Soviet Union, President Eisenhower said that the failure to achieve a nuclear test ban "would have

to be classed as the greatest disappointment of any administration, of any decade, of any time and of any party."

In 1992, President Bush, a former CIA Director and Ambassador to the United Nations, unilaterally halted nuclear weapons tests in the United States. President Clinton subsequently continued the moratorium. This treaty would halt nuclear weapons tests in other nations, as well. It would force other nations to do what this nation has already done and has been doing for these past several years.

Since the first test in 1945, the United States has conducted 1030 nuclear explosions—more than all other nations combined. As a result, we have far more test data and a far more deadly nuclear arsenal than any other nation. This treaty would effectively preserve this nation's position as the preeminent nuclear weapons power.

It would limit the ability of nuclear-capable nations from developing more sophisticated and more deadly nuclear weapons. It does not outlaw improvements and advancements to weapons, but without the ability to test the new weapons, nations would be hesitant to deploy them.

For those nations that do not yet possess a nuclear arsenal, this treaty will hinder their ability to develop such an arsenal. Those nations will be barred from conducting and studying a single nuclear explosion. Perhaps they could develop, at some time in the future, a crude nuclear arsenal, but they would face daunting uncertainties without having witnessed a single explosion.

This treaty enhances our national security. It has the support of the Joint Chiefs of Staff and several former military leaders including Gen. Colin Powell. Besides solidifying this nation's vast lead in nuclear technology and nuclear weaponry, it would assist us in monitoring nuclear explosions throughout the world. Regardless of whether this treaty goes into force, this nation must determine whether other nations are conducting nuclear explosions. This treaty mandates a global network of sensors and allows for on-site inspections, so it would greatly assist this nation in meeting its monitoring responsibilities.

Questions have been raised about whether we can maintain the reliability of our nuclear arsenal absent more nuclear tests. Many nuclear experts, however, assert that we can maintain a reliable deterrent, as we have since 1992, without the nuclear explosions. Furthermore, this nation plans to allocate \$45 billion over the next ten years to ensure the reliability of our stockpile. What other nation has greater resources to dedicate to its stockpile? What other nation is better able, given its experience, to ensure the reliability of nuclear weapons?

Our allies, Britain and France, have conducted far fewer nuclear explosions than we have, yet they have ratified

this treaty. Over half of the nuclear-capable nations in the world have ratified this treaty. We have the least to lose and the most to gain if this treaty goes into force. This nation must do its part and help rid the world of these terrible nuclear explosions. I urge my colleagues to support a reexamination of these issues and a reconsideration of the Senate's regrettable course of action.

#### S CORPORATION ESOPs

Mr. BREAUX. Mr. President, in 1996 and 1997, I supported the creation of S corporation ESOPs, which—while they may sound a bit obscure to some—are an innovative way of giving employees an ownership stake in their companies and providing for their retirement.

The design of these programs was quite deliberate, and intended to accomplish very specific policy objectives. We sought to create not only an administrable structure for these plans, but also a program that encouraged private businesses to give their workers a "piece of the rock" and help them save for their retirement. The law therefore allows some deferral of tax liability on current-year revenues of a participating S corporation, but of course only for that portion of the company's revenues that are put into the ESOP accounts of employees. That is to say, the deferral only exists so long as the monies are not realized by employee-owners; when they withdraw the funds for their retirement benefit, they also pay a tax, and in this case, at a much higher rate than standard capital gains.

Recently, some have questioned whether this incentive should be eliminated. I am delighted that a strong bipartisan majority of the members of the Senate Finance Committee and House Ways and Means Committee have indicated they want to preserve the fundamental attributes of S corporation ESOPs. We have carefully scrutinized this matter in recent months, particularly in the context of the tax extenders legislation. We have determined that Treasury's proposal to eliminate the deferral aspect of S corporation ESOPs is a serious threat to the vitality of S corporation ESOPs. In rejecting this proposal, Congress has affirmed that—at a time when national savings rates are abysmally low, when Americans worry how they will fund their retirement, and when we in Congress worry about the future of Social Security—we cannot afford to undo such important programs.

In response to Treasury's concerns with possible abuse of the system, we included a revenue raising provision in the extenders package to strengthen the 1996 law. However, the Treasury Department objected to the provision and it was dropped during the last minute negotiations on the bill. Secretary Summers has agreed to work with me over the coming months on a provision to strengthen and preserve

broad-based employee ownership of S corporations through ESOPs in the future.

Today, there are 100,000 or more workers in America who are using and benefiting from the S corporation ESOP rules that we designed. We have reason to be proud of this accomplishment, and to point to it as an example of how we are helping Americans build wealth for their futures and their families through private ownership. I believe more workers stand to benefit from this great opportunity, which is working as Congress intended. I believe, along with a strong bipartisan group of my colleagues, that we must do all we can to sustain and promote S corporation ESOPs. I appreciate the strong support of Chairman ROTH and other members of the Finance Committee in particular to achieve this objective, and look forward to working with them on an ongoing basis for this very important cause.

#### FALL OF THE BERLIN WALL

Mr. GRAMS. At the Brandenburg Gate, West Berlin, on June 12, 1987, President Reagan issued a stunning challenge: "General Secretary Gorbachev, if you seek peace if you seek prosperity for the Soviet Union and Eastern Europe, if you seek liberalization: Come here to this gate! Mr. Gorbachev, open this gate! Mr. Gorbachev, tear down this wall!" And less than three years later, the wall crumbled, along with the threat of communism as a viable, universalist alternative to democracy.

I remember reporting on the fall of the Berlin Wall as a newscaster. I remember those first tentative attempts to climb over it, and the rush of revelers that followed when no shots were fired. Remember, the wall was built to keep people in, and freedom out. The guard posts in the East were facing eastward, not toward West Berlin. It is incredible that the tenth anniversary of this seminal event passed almost without comment. For it marked the end of the Soviet Empire, and foreshadowed the end of the Soviet Union itself. The global correlation of forces, as the Soviets used to say, aligned with freedom, not oppression.

The Wall crumbled because President Reagan was committed to achieving peace through strength. The Reagan Doctrine asserted the need to confront and rollback communism by aiding national liberation movements in Afghanistan, Angola, Grenada, Cambodia, and Nicaragua. He proved that once countries were in the Soviet camp, they need not remain there forever. He realized that our national prestige is reinforced and enhanced when we operate with a coherent, concise, and understandable foreign policy. And by doing so, he succeeded in inspiring and supporting dissidents behind the Iron Curtain who eroded the mortar of that Wall.

In contrast, the Clinton Administration has reacted to foreign policy cri-

ses, but has failed to develop a foreign policy. The Administration has lurched from managing one crisis to another, but never articulated the national interest in accordance with a core philosophy. Instead of consistently safeguarding and promoting our values abroad, it has acted on an ad hoc basis according to the needs of the moment, confusing our allies and emboldening rogue nations. Serbia was emboldened to conduct ethnic cleansing in Kosovo; North Korea was emboldened to develop nuclear weapons; Saddam Hussein was emboldened to strengthen his position in northern Iraq.

What is the Clinton Doctrine? We have been told about a "do-ability doctrine" whereby the United States acts "in the places where our addition of action will, in fact, be the critical difference." However, that alone cannot be the criteria for U.S. intervention. Under that formulation we could be expected to intervene anywhere in the world. And as Secretary Albright stated as our Ambassador to the U.N. "we are not the world's policeman, nor are we running a charity or a fire department."

However, as a practical matter, the combination of a "do-ability doctrine" with so-called "assertive multilateralism"—places the United States in the very position which Secretary Albright derided. It has resulted in both the abdication of our responsibilities and the misguided projection of our power. Instead of applying the Reagan Doctrine by equipping and training the Bosnian forces over our allies' objections, the Administration subcontracted our role of arming the Bosnians to a terrorist regime in Iran, unnecessarily endangering the lives of U.S. troops. Instead of arming the Bosnians, we supported our allies standing by in U.N. blue helmets, watching unarmed civilians be massacred in Srebrenica. In contrast, the attempt at nation building in Somalia, and the refusal to provide equipment requested on the ground because it would send the wrong signal, sacrificed the lives of 18 brave soldiers without regard to whether such action advanced our vital concerns. When this Administration acts according to the exigencies of the moment instead of according to an underlying philosophy, the country lurches from paralysis to "mission creep" without regard to the national interest.

Recently, there has been discussion of the possibility of reworking our entire military force structure—which is presently based on the capacity to fight two simultaneous major regional conflicts—in order to enable us to commit US troops to an ever-growing number of multilateral "peacekeeping" missions. I am concerned that we may sacrifice our vital national security interests in order to be able to participate in peripheral endeavors. We should not be shortsighted. We should not lose sight of what we must do in